

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
ASCOT FUND LTD., GABRIEL CAPITAL  
CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (SMB)

**[PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

On October 8, 2015, Defendants J. Ezra Merkin and Gabriel Capital Corporation (the “Merkin Defendants”), and Ascot Partners, L.P. (“Ascot Partners”) and Ascot Fund Ltd. (“Ascot Fund”) (together, the “Defendants”) filed two motions, ECF Nos. 283 and 285, and memoranda and declarations in support, ECF Nos. 284, 286, and 287, for summary judgment dismissing all remaining claims brought against them by Plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC

(“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, and the chapter 7 estate of Bernard L. Madoff.

The Trustee opposed the motions for summary judgment on November 25, 2015. ECF Nos. 289, 292-302.

On December 23, 2015, the Defendants filed their replies and other papers in support of their respective motions for summary judgment. ECF Nos. 306, 307, 308, 309, 310.

On June 1, 2016, the Defendants’ Motions for Summary Judgment were heard by the Honorable Stuart M. Bernstein. ECF No. 323. On January 30, 2017, the Court entered a Memorandum Decision Granting in Part and Denying in Part Defendants’ Motions for Summary Judgment (the “Decision”), as follows: (1) denied summary judgment as to Count Two, Two-Year Actual Fraudulent Transfers; (2) denied summary judgment as to Count Nine, Subsequent Transfers against the Merkin Defendants and Ascot Fund; (3) granted summary judgment as to Count Nine, Subsequent Transfers against Ascot Partners only; (4) denied summary judgment as to Count Ten, General Partner Liability; and (5) denied summary judgment as to Count Thirteen, Equitable Subordination. ECF No. 327.

For the reasons set forth in the Court’s Decision, which is incorporated herein and made a part hereof, it is hereby **ORDERED** that:

1. As to Count Two (Two-Year Actual Fraudulent Transfers); Count Nine (Subsequent Transfers against the Merkin Defendants and Ascot Fund); Count Ten (General Partner Liability); and Count Thirteen (Equitable Subordination), the Motions for Summary Judgment are **DENIED**;

2. As to Counts Nine (Subsequent Transfers against Ascot Partners), the Motions for Summary Judgment are **GRANTED**;

3. The parties shall amend their case management plan and set forth the date for the submission of their pre-trial order within 5 days of the entry of this Order.

Dated: February \_\_, 2017  
New York, New York

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HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE